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## HISHAM HALIM v. MAYA AHMAD FUAAD & ORS

COURT OF APPEAL, PUTRAJAYA
MOHD NAZLAN GHAZALI JCA
FAIZAH JAMALUDIN JCA
LEONARD DAVID SHIM JCA
B [CIVIL APPEAL NO: B-01(A)-360-07-2023]
13 NOVEMBER 2025

**Abstract** – *(i) The granting of leave by a Syariah Court to issue a notice to show cause in contempt proceedings is not a judicially reviewable decision under O. 53 of the Rules of Court 2012, as it is merely an initial, procedural step that does not alter the applicant's rights or obligations or meet the threshold of a final, appealable decision; (ii) A judicial review application that fundamentally constitutes an 'incompetency challenge' must be initiated through an application for leave at the Federal Court under art. 4(4) of the Federal Constitution, and not by filing a judicial review at the High Court. Failure to follow this proper procedure results in a lack of jurisdiction for the High Court to entertain the matter.*

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***CIVIL PROCEDURE:*** *Judicial review – Locus standi – Application to quash notice to show cause in committal proceedings – Leave granted by Syariah Court to issue notice to show cause – Whether leave granted 'decision' amenable to judicial review – Whether issuance of notice to show cause merely initial, procedural step – Whether applicant's rights or obligations altered or deprived – Rules of Court 2012, O. 53 r. 2(4)*

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***CIVIL PROCEDURE:*** *Judicial review – Limitation – Application for judicial review, seeking declaration that Syariah Court lacked jurisdiction or power to punish for contempt of court in connection with committal proceedings – Whether application filed within prescribed time-limit – Whether High Court seized with jurisdiction to consider application – Rules of Court 2012, O. 53 r. 3(6)*

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***CONSTITUTIONAL LAW:*** *Courts – Syariah Court – Contempt of court – Challenge to State Legislature's power to enact laws empowering Syariah Courts to hold persons in contempt – Challenge mounted by way of judicial review – Whether challenge essentially 'incompetency challenge' – Whether proper procedure followed in mounting challenge – Federal Constitution, art. 4(4)*

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The appellant and the first respondent, both Muslims, were married in 2007 and had two daughters. In 2017, the first respondent filed for divorce against the appellant at the Selangor Syariah High Court ('fifth respondent'). The fifth respondent ordered that interim custody of the children be granted to the appellant. The first respondent filed an application seeking revision of the

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decision. The Selangor Syariah Court of Appeal made an interim custody order which set aside all prior orders made by the fifth respondent in relation to the main custody case. The interim custody order granted both parents supervised access to their daughters every Tuesday and Friday from 9am to 12pm at the fifth respondent. Additionally, the appellant and first respondent must ensure the children are brought to facilitate these scheduled access sessions. Two years after the interim custody order, the first respondent filed an application seeking to issue a notice to show cause against the appellant ('first respondent's committal application'), to have the appellant committed to prison for contempt of court for his failure to attend the scheduled access sessions. The fifth respondent granted leave and the notice to show cause was served on the appellant. One year and seven months after the service of the notice to show cause, the appellant filed an application for judicial review at the High Court, seeking, *inter alia*, (i) a declaration that the fifth respondent lacked the jurisdiction or power to punish him for contempt of court in connection with the committal proceedings; and (ii) an order of *certiorari* to quash the sealed application of the first respondent's committal application, the sealed notice to show cause and all letters, notices, directions, orders or peremptory directions issued by or on behalf of the Registrar of the fourth respondent or the fifth respondent in respect of the first respondent's committal application. Dismissing the application, the High Court held that, *inter alia*, (i) the fifth respondent had the jurisdiction to initiate proceedings against any individual for contempt of court, whether in the face of the court or outside it; and (ii) the appellant's application for judicial review was premature since the hearing of the first respondent's committal application had not yet taken place and no committal order had been made against the appellant by the fifth respondent. Hence, the present appeal by the appellant against the decision of the High Court. The issues that arose for determination were: (i) whether the leave to issue a notice to show cause granted by the fifth respondent was a decision that was judicially reviewable under O. 53 of the Rules of Court 2012 ('ROC'); (ii) whether the appellant's judicial review application was filed outside the time limit prescribed under O. 53 r. 3(6) of the ROC and, if so, whether this court had jurisdiction to hear the appeal; and (iii) whether the appellant's application for judicial review was fundamentally an 'incompetency challenge', specifically challenging the State Legislature's power to enact laws, empowering the Syariah Courts to hold persons in contempt.

**Held (dismissing appeal)**
**Per Faizah Jamaludin JCA delivering the judgment of the court:**

**(1)** The fifth respondent had not issued an order of committal against the appellant. The leave granted to serve the notice to show cause on the appellant merely represented an initial procedure requirement; it was a necessary step to enable the first respondent to commence contempt proceedings against the appellant for his alleged non-compliance with

A the interim custody order. The appellant had not demonstrated the existence of a decision by a decision-maker which had the effect of altering his rights or obligations, or depriving him of benefits he was entitled to – specifically, his liberty, which was at stake, in the context of the first respondent's committal application. Without such a decision, B the threshold for judicial review under O. 53 r. 2(4) of the ROC was not met. As a result, the appellant lacked the standing to invoke judicial review and was not entitled to make such application. (paras 74, 75 & 78)

**(2)** Order 53 r. 3(6) of the ROC stipulates a strict requirement; any C application for judicial review must be made within three months from the date when the grounds for the application first arose, or from when the decision was first communicated to the applicant. Here, the appellant's application for judicial review was lodged significantly outside the prescribed period – one year and seven months after the D service of the notice to show cause. The appellant did not file any application for an extension of time. Accordingly, the High Court was deprived of jurisdiction to consider the application. (paras 80, 82 & 83)

**(3)** The appellant's application for judicial review essentially constituted a challenge to the constitutional validity of s. 229 of the Syariah Court E Civil Procedure (State of Selangor) Enactment 2003 (Selangor) (En 4/2003) and ss. 61 and 151 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (En 1/2003). The appellant's argument centred on the contention that State Legislatures did not have the authority, under the Federal Constitution, F to enact laws which conferred upon Syariah Courts the jurisdiction and power to initiate contempt proceedings and issue committal proceedings. The appellant's judicial review was, in substance, an 'incompetency challenge'. In accordance with the requirements stipulated under art. 4(4) of the Federal Constitution, such a challenge G necessitated an application for leave from the Federal Court, rather than the filing of a judicial review at the High Court. The appellant did not follow the proper procedure. (paras 97 & 98)

**(4)** Given the lack of compliance with both constitutional and procedural requirements, this court was without jurisdiction to entertain this H appeal. (para 101)

**Case(s) referred to:**

*A v. Mahkamah Rayuan Syariah Wilayah Persekutuan & Ors [2022] 8 CLJ 75 HC* ***(refd)***

*Ah Thian v. Government Of Malaysia [1976] CLJU 3; [1976] 1 LNS 3 FC* ***(refd)***

*Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip* I *Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals [2012] 1 CLJ 805 FC* ***(refd)***

*Ambiga Sreenevasan v. Ketua Pengarah Imigresen, Malaysia & Ors [2012] 7 CLJ 170 HC* ***(refd)***
*Hisham Halim v. Hj Mohd Na'im Hj Mokhtar (Civil Application No: 08 (L)-11-09-2022 (W)) (Unreported)* ***(refd)***
*Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 465 FC* ***(refd)***
*Ketua Pengarah Hasil Dalam Negeri v. Genting Malaysia Bhd [2025] 4 CLJ 710 CA* ***(refd)***
*Ketua Pengarah Hasil Dalam Negeri v. Mudah.my Sdn Bhd [2017] 5 CLJ 283 CA* ***(refd)***
*Loh Kooi Choon v. Government Of Malaysia [1975] CLJU 90; [1975] 1 LNS 90 FC* ***(refd)***
*Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC* ***(refd)***
*Maria Chin Abdullah v. Datuk Dr Hj Zulkifli Mohamad Al-Bakri Menteri Di Jabatan Perdana Menteri (Hal Ehwal Agama Islam) & Ors [2023] 1 CLJ 87 HC* ***(refd)***
*Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd [2010] 5 CLJ 123 CA* ***(refd)***
*Metacorp Development v. Ketua Pengarah Hasil Dalam Negeri [2011] CLJU 1002; [2011] 1 LNS 1002 HC* ***(refd)***
*P v. Attorney General [1999] 2 NZLR 501* ***(refd)***
*Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 301 FC* ***(refd)***
*Rosmah Mansor v. PP [2021] 10 CLJ 638 HC* ***(refd)***
*Samsiah Leman v. Ketua Polis Negara & Ors [2015] CLJU 813; [2015] 1 LNS 813 HC* ***(refd)***
*SIS Forum (Malaysia) v. Kerajaan Negeri Selangor; Majlis Agama Islam Selangor (Intervener) [2022] 3 CLJ 339 FC* ***(refd)***
*State Government Of Negeri Sembilan & Ors v. Muhammad Juzaili Mohd Khamis & Ors [2015] 8 CLJ 975 FC* ***(refd)***
*Taylor's College Sdn Bhd v. Ketua Pengarah Kesatuan Sekerja Malaysia & Ors [2009] 5 CLJ 153 CA* ***(refd)***
*Titular Roman Catholic Archbishop Of Kuala Lumpur v. Menteri Dalam Negeri & Ors [2014] 6 CLJ 541 FC* ***(refd)***
*Wan Johairiza Wan Ab Rahman v. Mahkamah Rayuan Syariah Selangor & Ors [2021] CLJU 2151; [2021] 1 LNS 2151 HC* ***(refd)***
*Wong Kin Hoong & Anor v. Ketua Pengarah Jabatan Alam Sekitar & Anor [2013] 4 CLJ 193 FC* ***(refd)***
*Wong Shee Kai v. Government Of Malaysia [2022] 10 CLJ 1 FC* ***(refd)***

**Legislation referred to:**

Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (En 1/2003), ss. 55, 58(1), (4), 59, 61(3)(b)(iii)
Federal Constitution, arts. 4(3), (4), 10(2)(a), 74(1), (2), 121(1A), 126, 128(1)(a), Ninth Schedule, List I item 4, List II item 1
Interpretation Acts 1948 and 1967, s. 50
Islamic Family Law (State of Selangor) Enactment 2003 (Selangor) (En 2/2003), ss. 4, 87
Rules of Court 2012, O. 53 rr. 2(4), 3(2), (6)
Syariah Court Civil Procedure (State of Selangor) Enactment 2003 (Selangor) (En 4/2003), ss. 151(1)(a), (b)(aa), 229

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*For the 1st respondent - Abd Shukor Ahmad; M/s Shukor Baljit & Partners*
*For the 2nd, 4th, 5th, 6th & 7th respondents - Hani Aziza Ismail & Mohd Khairuddin Idris; Assistant Legal Advisors*

A *For the 3rd & 8th respondents - Mohammad Sallehuddin Md Ali; AG's Chambers*
*For the 9th respondent - Kamaruzaman M Arif & Sofiah Omar; M/s Kamaruzaman Arif & Sofiah*

*[Editor's note: For the High Court judgment, please see Hisham Halim v. Maya Ahmad Fuad & Ors; Majlis Agama Islam Selangor (MAIS) (Intervener) [2023] 9 CLJ 912 (affirmed).]*

B *Reported by Najib Tamby*

## JUDGMENT

C **Faizah Jamaludin JCA:**

### Introduction

**[1]** This is an appeal by the appellant against the decision of the High Court of Malaya at Shah Alam ("Shah Alam High Court") delivered on 6 July 2023, which dismissed his substantive application for judicial review
D under O. 53 of the Rules of Court 2012.

**[2]** The parties in this appeal are the appellant, Hisham bin Halim, and the respondents-comprising the first respondent, Maya binti Ahmad Fuaad who is the appellant's ex-wife ("R1"); the second respondent, Ketua Hakim
E Syarie Mahkamah Syariah Selangor ("R2"); the third respondent, Ketua Pengarah Jabatan Kehakiman Syariah Malaysia ("R3"); the fourth respondent, Pendaftar Mahkamah Tinggi Syariah Selangor ("R4"); the fifth respondent, Mahkamah Tinggi Syariah Selangor ("R5"); the sixth respondent, Mahkamah Rayuan Syariah Selangor ("R6"); the seventh
F respondent, Kerajaan Selangor ("R7"); the eighth respondent, Kerajaan Malaysia ("R8"); and the ninth respondent, Majlis Agama Islam Selangor (MAIS) ("R9").

**[3]** The central issue raised by the appellant concerns an ongoing committal proceeding in application no: 10100-075-0829-2019, brought by
G R1 against him in the Selangor Syariah High Court (R5) at Shah Alam ("R1's committal application"). These proceedings stem from allegations that the appellant failed to comply with an interim custody order made by the Selangor Syariah Court of Appeal (R6) on 9 October 2017 and formally issued on 17 October 2017.

H **[4]** In his judicial review application filed at the Shah Alam High Court, the appellant sought several specific forms of relief. Central to his application was a declaration that the Selangor Syariah High Court (R5) lacked the jurisdiction or power to punish him for contempt of court in connection with the committal proceedings.

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**[5]** The appellant prayed for a prohibitory order to restrain the continuation of any further proceedings in relation to R1's committal application. Additionally, he sought an order of *certiorari* aimed at quashing the sealed application of R1's committal application, the sealed notice to show cause dated 23 October 2019, and all letters, notices, directions, orders or pre-emptory directions issued by or on behalf of the Registrar of the Selangor Syariah High Court (R4) or the Selangor Syariah High Court (R5) in respect of R1's committal application.

**Material Background Facts**

*Background To Custody Proceedings Between The Appellant & R1*

**[6]** The appellant, Hisham bin Halim, and the first respondent, Maya binti Ahmad Fuaad (R1), married in August 2007. They are both Muslims. Their marriage produced two daughters; the elder was born in 2013 and the younger in 2015.

**[7]** On 20 February 2017, R1 left the matrimonial home in Kuala Lumpur and relocated to her parents' residence in Shah Alam, Selangor. Shortly thereafter, on 22 February 2017, R1 initiated *ex parte* custody proceedings regarding the children at the Selangor Syariah High Court (R5) in Shah Alam. The following day, 23 February 2017, R5 granted R1 interim custody of both daughters.

**[8]** Subsequently, on 24 February 2017, R1 filed a summons for divorce against the appellant at R5.

**[9]** On 9 August 2017, R5 ordered that interim custody of the children be granted to the appellant. In response, on 15 August 2017, R1 filed an application seeking revision of the decision.

*Interim Custody Order By The Selangor Syariah Court Of Appeal*

**[10]** On 9 October 2017, the Selangor Syariah Court of Appeal (R6) made an interim custody order – formally issued on 17 October 2017 (the "interim custody order"). This order addressed the ongoing custody dispute between the appellant and R1 concerning their daughters.

**[11]** The interim custody order expressly sets aside all prior orders made by R5 in relation to 'Kes Induk Jagaan Anak Saman No 10300-028-0117-2017 (the "main custody case")'. R6 remitted the main custody case to R5 for a fresh hearing before a different Syariah Judge.

**[12]** R6 directed that interim custody of the children be divided between the parties until final determination is made in the main custody case. Specifically, interim custody of the elder daughter was granted to R1, while the younger daughter was to remain in the custody of the appellant. This arrangement was to remain in effect until the conclusion of the main custody case.

**[13]** Regarding access to the children, the interim custody order stipulated that both parents are entitled to access sessions with both daughters every Tuesday and Friday from 9am to 12pm. These sessions were to take place at R5 in Shah Alam and were to be supervised by both the police and a court officer, ensuring the safety and welfare of the children throughout the process.

**[14]** It was further ordered that the appellant and R1 were responsible for bringing the children to court specifically for the purpose of facilitating the access sessions. The order stipulated that these sessions involve only the appellant, R1, and the children themselves, without any interference from family members or solicitors representing either party.

*Committal Proceedings Initiated By Both Parties*

**[15]** Two years after the interim custody order, on 20 September 2019, R1 filed an application seeking to issue a notice to show cause against the appellant. This application – referred to as "R1's committal application" – sought to have the appellant committed to prison for contempt of court, specifically for his failure to attend the scheduled access sessions since 30 April 2019.

**[16]** By an order dated 8 October 2019 (issued on 23 October 2019), Tuan Mohd Asri bin Tahir, sitting as a judge of R5, granted R1 leave to issue a notice to show cause against the appellant ("notice to show cause"). In accordance with this grant of leave, on 23 October 2019, R1, through her solicitors, formally served the notice to show cause on the appellant.

**[17]** On 21 October 2019, the appellant initiated his own committal proceedings against R1, alleging her failure to attend access appointments since 10 July 2018 ("appellant's committal application"). Subsequently, by an order dated 11 November 2019 (issued on 14 November 2019), Tuan Mohd Asri bin Tahir granted leave to the appellant to issue a notice to show cause against R1. The appellant, through his solicitors, served the notice to show cause to R1 on 14 November 2019.

**[18]** The hearings for both R1's committal application and the appellant's committal application before R5 have been stayed, pending the disposal of the appellant's judicial review application.

*Application For Judicial Review By The Appellant*

**[19]** On 28 May 2021, approximately one year and seven months after R5 granted R1 leave to issue the notice to show cause against him, the appellant filed an application for judicial review at the Shah Alam High Court.

**[20]** At the time the appellant filed the judicial review application, R5 had not made any committal order against him. On 28 October 2021, R5 ordered a stay of proceedings in R1's committal application, pending the outcome of the appellant's judicial review application at the Shah Alam High Court.

**[21]** On 7 July 2023, the Shah Alam High Court dismissed the appellant's application for judicial review. The High Court held that R5 has the jurisdiction to hear cases relating to the guardianship and custody of infants in accordance with s. 61(3)(b)(iii) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (En 2/2003), and to make custody orders under Part VII of the Islamic Family Law (State of Selangor) Enactment 2003 (Selangor) (En 1/2003).

**[22]** The High Court further determined that R5 has the authority, as well as jurisdiction to hear committal proceedings under s. 151 of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003 (Selangor) (En 4/2003). And that under s. 229 of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003, R5 has the jurisdiction to initiate proceedings against any individual for contempt of court, whether in the face of the court or outside it.

**[23]** Based on these statutory provisions, the Shah Alam High Court concluded that R5 is empowered to hear and determine committal proceedings, including those concerning contempt of court relating to custody orders.

**[24]** The Shah Alam High Court further held that the leave granted by R5 to R1 to serve the notice to show cause on the appellant constituted only the initial stage in R1's committal application and was therefore inchoate. It deemed the appellant's application for judicial review as premature since the hearing of R1's committal application had not yet taken place, and no committal order had been made against the appellant by R5.

## This Appeal

*The Appellant's Case*

**[25]** The appellant asserts that his application for judicial review challenged both the jurisdictional foundation and the procedural validity of the contempt and committal proceedings initiated by R1 against him before R5. He submits that the Shah Alam High Court ought to have allowed his judicial review application for the following reasons.

Lack Of Jurisdiction To Punish Contempt

**[26]** The appellant argues that R5 does not possess the jurisdiction or power to punish contempt of its own court, based on a purposive interpretation of s. 229 of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003, read in conjunction with the Federal Constitution and s. 61 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003. He submits that, properly construed, these provisions do not confer on R5 the requisite jurisdiction or power to punish for contempt.

A Absence Of Jurisdiction Over The Relevant Family Proceedings

**[27]** The appellant further contends that neither R5 nor R6 has jurisdiction to hear the relevant proceedings concerning his family, as their matrimonial home was located in Kuala Lumpur. He relies on an interpretation of s. 4 of the Islamic Family Law (State of Selangor) Enactment 2003, read together with the Federal Constitution, to support his position that the Selangor Syariah Courts lack territorial jurisdiction in the matter.

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Interim Custody Order Not Enforceable By Contempt

**[28]** In the alternative, and in addition to his first point, the appellant submits that the interim custody order, which can only be made pursuant to s. 87 of the Islamic Family Law (State of Selangor) Enactment 2003, is not subject to enforcement by way of contempt proceedings. He maintains that custody orders fall outside the scope of orders that may be enforced through contempt.

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D Unlawful Committal Proceedings Due To Non-Gazetted Judge

**[29]** The appellant further argues that R5 is not entitled to proceed with the committal proceedings because the order dated 8 October 2019 was made unlawfully. Specifically, he claims that Tuan Mohd Asri bin Tahir, who issued the order, was not a properly gazetted Selangor Syariah High Court Judge, contrary to s. 58(4) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.

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Irrationality Of Decisions, Actions Or Omissions

**[30]** The appellant contends that the decisions, actions or omissions in relation to the committal proceedings were irrational. He maintains that the conduct of the relevant authorities did not meet the standard of rationality required by law.

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Procedural Impropriety

G **[31]** Finally, the appellant submits that the decisions, actions or omissions were procedurally improper. He asserts that there were failures to comply with the required procedures, rendering the proceedings defective.

*The Respondents' Case*

H R1's Submissions In Opposition To The Appeal

**[32]** R1 asserts that the appellant's application for judicial review should be dismissed for the following reasons.

Application Filed Out Of Time

I **[33]** First, R1 contends that the appellant's application for judicial review was not submitted within the prescribed time period. According to O. 53 r. 3(6) of the Rules of Court 2012, applications for judicial review must be filed within three months from the date when the grounds for the application

first arose or when the decision was first communicated to the applicant. R1 highlights that the appellant failed to comply with this three-month timeframe and did not file any application for an extension of time. Citing *Wong Kin Hoong & Anor v. Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 CLJ 193; [2013] 4 MLJ 161, learned counsel for R1 submits that adherence to this timeline is fundamental and directly impacts the jurisdiction of the High Court. On this ground alone, R1 argues that the appellant's application for judicial review is without merit and ought to be dismissed.

Incompetency Challenge Requires Leave Under Article 4(4) FC

**[34]** Secondly, R1 submits that the appellant's case constitutes an "incompetency challenge", which must be initiated with leave of the Federal Court under art. 4(4) of the Federal Constitution and cannot be advanced indirectly through judicial review proceedings at the High Court.

**[35]** R1 refers to *Wong Shee Kai v. Government Of Malaysia* [2022] 10 CLJ 1, emphasising that the appellant's argument is, at its core, an incompetency challenge – specifically, the claim that the Selangor State Legislature lacks the authority to enact laws empowering the Selangor Syariah Courts to hold individuals in contempt. Given that the appellant has not sought or obtained the required leave under art. 4(4) of the Federal Constitution, R1 contends that the appeal must fail on this basis.

Power Of State Legislature To Enact Laws On Contempt

**[36]** Thirdly, R1 states that the appellant's assertion regarding the lack of legislative power by the Selangor State Legislature is misguided. The appellant's case is that only Parliament possesses the authority to legislate on matters of contempt, as this is encompassed within the term "administration of justice" found in art. 74(1) and Item 4 of List I in the Ninth Schedule of the Federal Constitution. The appellant further claims that the absence of this phrase in art. 74(2) and Item 1 of List II in the Ninth Schedule means that State Legislature cannot legislate on contempt in relation to Syariah Courts, being limited instead to matters of "constitution, organisation and procedure".

**[37]** R1 argues it is the appellant's duty to prove that the omission of the phrase "administration of justice" prevents State Legislatures from empowering State Syariah Courts to punish contempt. R1 notes the appellant has given no supporting authorities, and therefore requests the appeal be dismissed with costs.

Submissions Of The Assistant Selangor State Legal Advisor For R2, R4-R7

**[38]** The learned Assistant Selangor State Legal Advisor ("ALA"), appearing on behalf of R2, R4, R5, R6 and R7, submits that the appellant's appeal ought to be dismissed for the following reasons.

Absence of an Impugned Decision Amenable To Judicial Review

**[39]** First, the learned ALA contends that there is no decision made by R5 that is capable of being challenged by way of judicial review. Specifically, R5's order granting leave for R1 to issue the notice to show cause does not constitute a final decision that disposes of the rights of the appellant. As a result, the appellant is not adversely affected by the grant of leave to issue the notice to show cause, and his legal rights remain unchanged. In support of this proposition, the learned ALA referenced the cases of *Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals* [2012] 1 CLJ 805 and *Taylor's College Sdn Bhd v. Ketua Pengarah Kesatuan Sekerja Malaysia & Ors* [2009] 5 CLJ 153; [2009] 3 MLJ 437. The ALA submits that for this reason, the appellant's application for judicial review is premature and should be dismissed.

Application For Judicial Review Is Time-Barred

**[40]** Secondly, the ALA submits that the appellant's application for judicial review was filed outside the permissible time limit. The application was made one year and seven months after the date of the alleged impugned decision. This delay renders the application time-barred: see *Wong Kin Hoong & Anor v. Ketua Pengarah Jabatan Alam Sekitar & Anor* (*supra*).

Jurisdiction Of The Selangor Syariah Court To Hear And Determine Committal Proceedings

**[41]** Thirdly, the learned ALA argues that the Selangor Syariah Court possesses jurisdiction to hear and determine committal applications arising from the breach of custody orders granted by the Syariah Court. This is premised on several statutory provisions:

(i) under s. 61 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 and Part VII of the Islamic Family Law (State of Selangor) Enactment 2003, the Selangor Syariah Court is empowered to hear and determine proceedings relating to the custody (hadhanah) of infants;

(ii) section 151(1)(b)(aa) of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003 authorises the Syariah Syariah Court to initiate and conduct committal proceedings; and

(iii) section 229 of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003 provides that the Selangor Syariah Court may commence proceedings against any person for contempt of court and has the power to make an order for committal for a period not exceeding six months or to impose a fine not exceeding RM2,000.

Federal Constitution Safeguards The Jurisdiction Of The Syariah Courts

**[42]** Fourthly, the learned ALA contends that the jurisdiction and proceedings of the Syariah Courts are insulated from interference by civil courts. This protection arises from art. 121(1A) of the Federal Constitution, which establishes that civil courts do not possess authority over matters falling squarely within the exclusive jurisdiction of the Syariah Courts.

**[43]** In support of this assertion, the ALA referred to the decision in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301, where the principle of non-interference by civil courts in Syariah matters was affirmed. Accordingly, civil courts are precluded from adjudicating on issues that are within the domain of the Syariah Courts, except in narrowly defined circumstances.

**[44]** Those circumstances are confined to situations where the constitutionality of a provision under Syariah law is challenged. In such cases, the supervisory jurisdiction of civil courts may be invoked. This position finds support in the cases of *Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 465; [2021] 2 MLJ 323, and *SIS Forum (Malaysia) v. Kerajaan Negeri Selangor; Majlis Agama Islam Selangor (Intervener)* [2022] 3 CLJ 339, both of which clarify that civil courts' involvement is limited solely to constitutional review of Syariah provisions.

Lawful Appointment Of The Selangor Syariah Judge

**[45]** Finally, the learned ALA argues that the Selangor Syariah Judge, Tuan Mohd Asri bin Tahir, who made the order granting leave for R1 to serve the notice to show cause against the appellant, was lawfully appointed by His Royal Highness the Sultan of Selangor in accordance with s. 58(1) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003. The appointment was duly published in the Selangor State Government *Gazette* No 3176, Volume 74, No 36 dated 23 December 2021, indicating the date of appointment as 2 January 2019.

**[46]** The learned ALA further submits that the *gazette* notification required by s. 58(4) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 serves only as a notification of the appointment and may be issued retrospectively pursuant to s. 50 of the Interpretation Acts 1948 and 1967, provided the date of appointment does not precede the commencement of the parent Act, which in this case it did not – the Administration of the Religion of Islam (State of Selangor) Enactment 2003 came into force on 1 September 2003. The ALA relies on the authorities of *Rosmah Mansor v. PP* [2021] 10 CLJ 638 and *Loh Kooi Choon v. Government Of Malaysia* [1975] CLJU 90; [1975] 1 LNS 90; [1977] 2 MLJ 187 to support this argument.

Submissions By Senior Federal Counsel For R3 And R8

**[47]** Learned Senior Federal Counsel ("SFC") for R3 and R8 argues that the appellant's application for judicial review against R3 and R8 is fundamentally flawed, as both parties have been wrongly included in the proceedings. According to the SFC, there is no decision, action or omission by either R3 or R8 for the court to review, citing *Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd* [2010] 5 CLJ 123; [2010] 4 MLJ 360; *Ambiga Sreenevasan v. Ketua Pengarah Imigresen, Malaysia & Ors* [2012] 7 CLJ 170; [2012] 1 MLJ 92; and *Samsiah Leman v. Ketua Polis Negara & Ors* [2015] CLJU 813; [2015] 1 LNS 813; [2016] 7 MLJ 149.

**[48]** He highlighted that the true subject matter of the judicial review application is R1's committal application at R5 in Shah Alam. The appellant's statement under O. 53 r. 3(2) of the Rules of Court 2012 does not mention any decisions, actions or omissions attributable to R3 or R8. Furthermore, neither R3 nor R8 are involved in R1's committal application.

**[49]** The inclusion of R3 by the appellant appears to be based on a WhatsApp message sent by R3 to all Syarie Judges in Malaysia, which the appellant alleges could influence judicial decision-making against him and constitutes contempt of the civil courts. The appellant previously filed a notice of motion at the Federal Court on 5 September 2022 seeking leave to apply for an order of committal against R3 for this message. However, the Federal Court dismissed this application on 10 January 2023: see *Hisham Halim v. Hj Mohd Na'im Hj Mokhtar*, Federal Court, Civil Application No. 08 (L)-11-09-2022 (W).

**[50]** Learned SFC further contends that the appellant's claim, which suggests that R3's WhatsApp message would influence all Syarie Judges in Malaysia, is misconceived for several reasons. Although R3 holds the position of Ketua Pengarah Jabatan Kehakiman Syariah Malaysia and is also known as Ketua Hakim Syarie Jabatan Kehakiman Syariah Malaysia, R3 does not wield any control over the Syariah Courts in Selangor.

**[51]** The highest Syariah Court in Selangor is the Selangor Syariah Court of Appeal. The creation of Syariah Courts in Selangor is governed by s. 55 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003, which stipulates that the Selangor Syariah Subordinate Courts, Selangor Syariah High Court, and Selangor Syariah Court of Appeal are constituted by His Royal Highness the Sultan of Selangor, acting on the advice of the Majlis Agama Islam Selangor (R9). R3 does not have any legal role in the establishment of these courts.

**[52]** Furthermore, the highest judicial office in Selangor's Syariah Courts – the Chief Syarie Judge of Selangor – is appointed by the Sultan of Selangor on advice from R9. R3 does not participate in this appointment process.

Other judges in the Selangor Syariah Court of Appeal and the Syariah Court are similarly appointed by the Sultan on the advice of R9 and the Chief Syarie Judge of Selangor, pursuant to s. 59 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003. R3 has no legal role in such appointments.

**[53]** Learned SFC maintains that, ultimately, R3 does not possess any power, control or role under the Administration of the Religion of Islam (State of Selangor) Enactment 2003, nor under any other Syariah law of Selangor, in relation to proceedings before the Syariah Courts in Selangor, including R1's committal application.

Submissions By R9

**[54]** R9 contends that the appellant's appeal lacks merit and should be dismissed for several key reasons, each of which is set out below.

Jurisdiction Of The Selangor Syariah Court

**[55]** R9 asserts that the central issue raised by R1's committal application comes squarely within the jurisdiction of the Selangor Syariah Court. In other words, the subject matter properly belongs before the Selangor Syariah Court, and the court is the appropriate forum to determine the issues in question.

**[56]** Learned counsel for R9 argues that validity of State laws conferring jurisdiction on the Selangor Syariah High Court cannot be challenged collaterally by judicial review proceedings in the civil court.

**[57]** R9 contends that the central issue in the appellant's judicial review at Shah Alam High Court concerns the constitutionality of the Selangor State law (see arts. 4(3) and 128(1)(a) of the Federal Constitution). R9 submits that R1's committal application cannot be reviewed by civil courts due to art. 121(1A) of the Federal Constitution, which excludes matters under Syariah Courts' jurisdiction: see *A v. Mahkamah Rayuan Syariah Wilayah Persekutuan & Ors* [2022] 8 CLJ 75; [2022] MLJU 1376; *Wan Johairiza Wan Ab Rahman v. Mahkamah Rayuan Syariah Selangor & Ors* [2021] CLJU 2151; [2021] 1 LNS 2151; [2021] MLJU 2586).

Non-Reviewability Of Leave To Commence Committal Proceedings

**[58]** R9 further contends that an order granting leave to commence committal proceedings is not a decision that can be reviewed under O. 53 of the Rules of Court 2012. In the case of *Ketua Pengarah Hasil Dalam Negeri v. Mudah.my Sdn Bhd* [2017] 5 CLJ 283, the Court of Appeal held that, to be amenable to judicial review, a decision must be final in nature and must affect substantive rights. Orders granting leave do not satisfy these criteria and therefore cannot be challenged through judicial review proceedings.

A Time-Barred Judicial Review Application

**[59]** Another ground put forth by R9 is that the appellant's judicial review application was submitted outside the time-limit prescribed by O. 53 r. 3(6) of the Rules of Court 2012. As a result, the application is time-barred and ought not to be entertained by the court.

B

Valid Appointment Of Syariah High Court Judge

**[60]** Finally, R9 contends that the appointment of Tuan Mohd Asri bin Tahir as a judge of the Selangor Syariah High Court was carried out in accordance with the proper procedures and has been duly gazetted. As such,
C R9 maintains that there is no basis for questioning the legality or validity of Tuan Mohd Asri's judicial appointment, and that any challenge in this regard is unfounded.

**[61]** In conclusion, R9 submits that each of the grounds presented – whether considered individually or in combination – provides sufficient
D justification to dismiss the appellant's appeal. The reasoning advanced highlights both procedural and substantive obstacles which, according to R9, prevent reconsideration of the underlying committal proceedings and the judicial review application. On this basis, R9 invites this court to uphold the Shah Alam High Court's decision and to dismiss the appeal in its entirety.

E

**Preliminary Jurisdictional Issues**

**[62]** Given the nature of the appellant's application for judicial review and in light of the preliminary jurisdictional objections raised by the respondents, this court finds it essential to first resolve a set of threshold issues prior to
F engaging with the substantive matters of this appeal. Addressing these preliminary questions will provide clarity regarding the extent of this court's jurisdiction in relation to the present appeal. Only after determining whether this court possesses the jurisdiction to adjudicate the substantive aspects of the appeal, can the merits of the appellant's case be duly considered.
G The determination of these jurisdictional issues is, therefore, a necessary step in the overall appellate process of this appeal.

**[63]** The preliminary jurisdictional issues to be considered are as follows:

(i) whether the leave to issue a notice to show cause granted by R5 in R1's committal application is a decision that is judicially reviewable under
H O. 53 of the Rules of Court 2012;

(ii) whether the appellant's judicial review application was filed outside the time limit prescribed under O. 53 r. 3(6) of the Rules of Court 2012, and if so, whether this court has jurisdiction to hear this appeal; and

I (iii) whether the appellant's application for judicial review is fundamentally an "incompetency challenge", specifically challenging the State Legislature's power to enact laws empowering the Syariah Courts to hold persons in contempt.

**[64]** We are of the view that each of these issues is integral to determining this court's jurisdiction and must be addressed at the outset before the substantive matters of this appeal can be considered. Addressing these threshold matters ensures procedural propriety and provides clarity on the limits of appellate intervention in these proceedings.

*Issue (i): Whether The Leave To Issue A Notice To Show Cause Granted By R5 In R1's Committal Application Is A Decision That Is Judicially Reviewable Under Order 53 Of The Rules Of Court 2012?*

**[65]** No order for committal has been made by R5 against the appellant in respect of R1's committal application. As previously stated, both R1's committal application and the appellant's committal application before R5 have been stayed, pending the outcome of the appellant's judicial review application at the civil courts.

**[66]** As highlighted in the introduction section of this judgment, the appellant's judicial review application at the Shah Alam High Court sought, among other remedies, an order of *certiorari* to quash the sealed notice to show cause and a prohibitory order to restrain any further proceedings in relation to R1's committal application. All the respondents argue that since the substantive hearing of R1's committal application has not yet taken place, R5 has not made any decision as to whether the appellant is in contempt of the interim custody order. They further submit that the law is settled: a leave order to commence committal proceedings is merely an interlocutory step and does not constitute a "decision" that is judicially reviewable under O. 53 of the Rules of Court 2012.

**[67]** The Shah Alam High Court found that the leave granted by R5 to R1 to serve the notice to show cause on the appellant represented only an initial stage in R1's committal application and was therefore inchoate. Since no committal order has been made against the appellant by R5, the court held that the application for judicial review is premature.

**[68]** In response, the appellant contends that the Shah Alam High Court's finding that his application for judicial review is premature is misconceived. The appellant's counsel submits that where the very jurisdiction to proceed is challenged, the availability of internal steps before the same tribunal does not constitute an adequate alternative remedy. He maintains that civil courts may intervene to arrest jurisdictional excess, which is consistent with orthodox public law principles. In support of this position, he cites several authorities: *Maria Chin Abdullah v. Datuk Dr Hj Zulkifli Mohamad Al-Bakri Menteri Di Jabatan Perdana Menteri (Hal Ehwal Agama Islam) & Ors* [2023] 1 CLJ 87; [2023] 1 MLRH 208 ("*Maria Chin No. 1*"); *Metacorp Development v. Ketua Pengarah Hasil Dalam Negeri* [2011] CLJU 1002; [2011] 1 LNS 1002;

*Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1993] 3 MLJ 1; and the New Zealand case of *P v. Attorney General* [1999] 2 NZLR 501.

**[69]** Pursuant to s. 151(1) of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003, a judgment or order of the Selangor Syariah Court may be enforced, with the leave of the court, by an order of committal. Section 151(1) reads:

> 151. Enforcement of judgment to do or abstain from doing an act
>
> (1) Where:
>
> (a) *a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time* or within that time as extended or abridged under section 238, as the case may be; or
>
> (b) a person disobeys a judgment or order requiring him to abstain from doing an act, then, subject to this Enactment, *the judgment or order may be enforced by one or more of the following means*, that is to say:
>
> (aa) *with the leave of the Court, an order of committal*; or
>
> (bb) where that person is a body corporate, with the leave of the Court, an order of committal against any director or other officer of the body.
>
> (emphasis added)

**[70]** The provisions governing contempt of court are contained in Part XXIV: Contempt of Court of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003. Section 229 of Part XXIV reads:

> 229. Notice to show action or cause
>
> (1) *The Court shall have the jurisdiction to commence proceedings against any person for contempt of Court* and may, in such proceedings, make an order of committal for a period not exceeding six months or may impose a fine not exceeding two thousand ringgit.
>
> (2) Where contempt is committed in the face of the Court, it shall not be necessary for the Court to serve the notice to show cause but the Court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him and has the opportunity to be heard in his own defence, and shall make a proper record of the proceedings.
>
> (3) *In the case of contempt committed outside Court, notice to show cause why an action or proceedings should not be taken against him shall be served personally on the person alleged to have committed such contempt*.
>
> (emphasis added)

**[71]** The alleged contempt committed by the appellant was that he failed, since 30 April 2019, to attend the access sessions, together with his younger daughter, on the days and times order by R6 in the interim custody order.

It is an alleged contempt that is committed not in the face of the Syariah Court – it is committed outside court. Therefore, pursuant to s. 229(3) of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003, a notice to show cause as to why an action or proceedings should not be taken against the appellant must be served personally on him before action or proceedings for contempt of court can be commenced against him.

**[72]** In *Ketua Pengarah Hasil Dalam Negeri v. Mudah.my Sdn Bhd* [2017] 5 CLJ 283; [2017] 2 MLJ 197 ("*KPHDN v. Mudah.my*"), the respondent had made an application for *certiorari* to quash the decisions allegedly made by the appellant in a "letter of findings". The Court of Appeal held:

> [9] It is a principle which remains a good and trite law that *certiorari will lie to quash a decision which has already been made by a public authority in excess or abuse of jurisdiction or contrary to the rules of natural justice or where there is an error of law on the face of the decision of the public authority* (see *Malaysian Court Practice*, 2007 Desk Edition at p. 670). *For a decision to be quashed on judicial review or susceptible to the court's reviewing powers, there must first be a decision by a decision maker, and that decision must affect the aggrieved party by either altering the rights or obligations or depriving him of the benefits which he has been permitted to enjoy* (*Members of the Commission ...* [2011] 6 MLJ 490; *Council of Civil Service Union v. Minister for the Civil Service* [1984] 3 All ER 935).
>
> (emphasis added)

**[73]** The Court of Appeal in *KPHDN v. Mudah.my* held that the letter of findings issued by appellant merely informed the respondent of the initial audit findings and issues of the field audit conducted based on documentation furnished by the respondent. It held that the letter of findings did not form the decision of the appellant and accordingly, did not come within the ambit of O. 53 of the Rules of Court 2012. In its recent decision in *Ketua Pengarah Hasil Dalam Negeri v. Genting Malaysia Bhd* [2025] 4 CLJ 710, the Court of Appeal cited with approval the decision in *KPHDN v. Mudah.my*. Azizah Nawawi JCA (as she then was) held:

> [41] Therefore, in order to invoke the judicial review powers of the court under O. 53 r. 2(4) of the ROC 2012, there must first be a decision by a decision maker (DGIR) or a refusal by him to make a decision, and, that decision must affect the aggrieved party (Genting) by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy.

**[74]** In the present case, it is clear that R5 has not issued an order of committal against the appellant. The learned Shah Alam High Court Judge correctly observed that the leave granted by R1 to serve the notice to show cause on the appellant represents merely an initial procedural requirement, in accordance with s. 229 of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003. It is a necessary step to enable R5 to commence contempt proceedings against the appellant for his alleged non-compliance with the interim custody order.

**[75]** It is evident that the appellant has not demonstrated the existence of a decision by a decision maker which has had the effect of altering his rights or obligations or depriving him of benefits he was entitled to – specifically, his liberty, which is at stake in the context of R1's committal application. Without such a decision, the threshold for judicial review under O. 53 r. 2(4) of the Rules of Court 2012 is not met.

**[76]** Accordingly, in relation to issue (i), we conclude that R5's grant of leave to serve the notice to show cause on the appellant does not constitute a "decision" that may be judicially reviewed by the High Court under O. 53 of the Rules of Court 2012.

**[77]** We find that as there was no decision made by R5, the appellant cannot be considered a person "adversely affected" by any action of R5 in the discharge of its public duties.

**[78]** It is evident to us that the appellant does not meet the requirements necessary to bring an application for judicial review pursuant to O. 53 of the Rules of Court 2012. Specifically, there has been no decision by a decision maker that has altered the appellant's rights or obligations or deprived him of any benefit he is entitled to, as required by the established authorities, and reaffirmed by this court recently in *Ketua Pengarah Hasil Dalam Negeri v. Genting Malaysia Bhd*. The procedural act of granting leave to serve the notice to show cause is merely an initial step and does not constitute a reviewable decision within the meaning of O. 53. As a result, the appellant lacks the standing to invoke judicial review in this context. Consequently, we find that the appellant is not entitled to make an application for judicial review under O. 53 of the Rules of Court 2012.

*Issue (ii): Whether The Appellant's Judicial Review Application Was Filed Outside The Time Limit Prescribed Under Order 53 Rule 3(6) Of The Rules Of Court 2012, And If So, Whether This Court Has Jurisdiction To Hear The Appeal?*

**[79]** In light of our determination in issue (i), we turn our attention to issue (ii) concerning the timeliness of the appellant's judicial review application.

**[80]** Order 53 r. 3(6) of the Rules of Court 2012 stipulates a strict requirement: any application for judicial review must be made within three months from the date when the grounds for the application first arose, or from when the decision is first communicated to the applicant.

**[81]** The significance of this time frame was affirmed by the Federal Court in *Wong Kin Hoong & Anor v. Ketua Pengarah Jabatan Alam Sekitar & Anor* (*supra*). In that case, the Federal Court made it clear that the prescribed time limit is not a mere procedural requirement but is integral to the court's jurisdiction to hear the matter. Raus Sharif PCA (as he then was) held that if a trial judge rejects an applicant's request for an extension of time to apply for judicial review, the court is thereby deprived of the jurisdiction to entertain the application.

**[82]** Here, the appellant's application for judicial review was lodged significantly outside the prescribed period – one year and seven months after service of the notice to show cause. Specifically, the notice to show cause was served on the appellant on 23 October 2019, while his application for judicial review was filed on 28 May 2021. The appellant did not file any application for an extension of time. Accordingly, the High Court is deprived of jurisdiction to consider the application.

**[83]** Consequently, on issue (ii) we conclude that this court also lacks jurisdiction to hear the appellant's appeal. On this basis, the appeal must be dismissed.

*Issue (iii): Whether The Appellant's Application For Judicial Review Is Fundamentally An "Incompetency Challenge", Specifically Challenging The State Legislature's Power To Enact Laws Empowering The Syariah Courts To Hold Persons In Contempt?*

**[84]** Having determined that both the absence of a reviewable decision and the failure to comply with the statutory time limit preclude the appellant from proceeding with his judicial review application under O. 53, we turn now to consider issue (iii) regarding the substantive nature of the appellant's challenge.

**[85]** The focus shifts to whether his judicial review application constitutes an "incompetency challenge", specifically questioning the State Legislature's authority to enact laws empowering the Syariah Courts to punish contempt. This issue engages a detailed examination of the legislative framework under the Federal and State Lists, as well as the relevant constitutional provisions and enactments, to assess the extent of jurisdiction conferred upon the Syariah Courts in the context of contempt proceedings.

**[86]** The primary issue raised by the appellant in his application for judicial review before the High Court, and reiterated in this appeal, concerns whether R5 holds the necessary jurisdiction or authority to punish contempt committed against itself. The appellant's argument is grounded on a purposive interpretation of s. 229 of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003, considered in conjunction with the relevant provisions of the Federal Constitution and s. 61 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.

**[87]** The appellant contends that, when these statutory and constitutional provisions are examined together, they do not confer upon R5 the power to punish acts of contempt against itself. This submission is central to the appellant's case and forms the foundation for his challenge to R5's jurisdiction in this regard.

**[88]** In support of his position, the appellant asserts that the Federal Constitution establishes a distinct and specific framework concerning contempt of court. Article 126 of the Federal Constitution expressly confers upon the Federal Court, the Court of Appeal, and the High Court the power to punish contempt of court committed against themselves.

**[89]** The appellant further refers to art. 74(1) of the Federal Constitution, which provides that Parliament possesses legislative competence to enact laws relating to any of the matters enumerated in the Federal List or the Concurrent List – namely, the First or Third List as set out in the Ninth Schedule. In parallel, art. 74(2) stipulates that State Legislatures have the authority to legislate on matters listed in the State List, which is the Second List of the Ninth Schedule, as well as the Concurrent List.

**[90]** In this regard, it is pertinent to set out the relevant statutory provisions. Item 4(a) and (b) of List I – Federal List of the Ninth Schedule states:

> 4. Civil and criminal law and procedure and the **administration of justice**, including:
>
> (a) the constitution and organisation of all courts other than Syariah Courts;
>
> (b) the jurisdiction and powers of all such courts.
>
> (emphasis added)

**[91]** By contrast, item 1 of List II – State List of the Ninth Schedule provides:

> 1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; *the constitution, organization and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law*; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom.
>
> (emphasis added)

**[92]** The appellant contends that item 1 of List II – State List in the Ninth Schedule does not contain the phrase "administration of justice", whereas item 4 of List I – Federal List explicitly includes the phrase "administration of justice". This distinction is considered significant by the appellant, especially when viewed in conjunction with art. 126 of the Federal Constitution, which confers upon the Federal Court, the Court of Appeal, and the High Court the authority to punish contempt of court committed against themselves. The appellant also refers to art. 10(2)(a) of the Federal Constitution, which provides:

> 10.(1) Subject to Clauses (2), (3), (3A) and (4)-
>
> (a) every citizen has the right to freedom of speech and expression;
>
> (2) Parliament may by law impose:
>
> (a) **on the rights conferred by paragraph (a) of Clause (1)**, such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, or **to provide against contempt of court, defamation, or incitement to any offence**.
>
> (emphasis added)

**[93]** On the basis of these constitutional provisions, the appellant submits that the power to make laws in respect of contempt of court resides solely within the domain of Parliament. Consequently, State Legislatures are not empowered to make laws relating to contempt of Syariah Courts. Learned counsel for the appellant argues that, while the Federal Constitution permits Parliament to vest civil courts with contempt powers, it does not grant similar authority to State Legislatures with respect to Syariah Courts.

**[94]** If the appellant's challenge to the Selangor Syariah Court Enactments is, indeed, an "incompetency challenge", then the appellant must first obtain leave from the Federal Court under art. 4(4) of the Federal Constitution: see *Ah Thian v. Government Of Malaysia* [1976] CLJU 3; [1976] 1 LNS 3; [1976] 2 MLJ 112; *State Government Of Negeri Sembilan & Ors v. Muhammad Juzaili Mohd Khamis & Ors* [2015] 8 CLJ 975; [2015] 6 MLJ 736. A challenge on the validity or constitutionality of laws cannot be advanced by way of judicial review under O. 53 of the Rules of Court 2012: see *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Ors* [2014] 6 CLJ 541; [2014] 4 MLJ 765.

**[95]** For reference, arts. 4(3) and 4(4) of the Federal Constitution provide as follows:

> (3) *The validity of any law made by Parliament or the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or,* as the case may be*, the Legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground or:*

A (a) if the law was made by Parliament, in proceedings between the Federation and one or more States;

(b) if the law was made by the Legislature of a State, in proceedings between the Federation and that State.

B (4) *Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3)* (not being proceedings falling within paragraph (a) or (b) of the Clause) *shall not be commenced without the leave of a judge of the Federal Court*; and the Federation shall be entitled to be a party to any such proceedings, and so shall any State that would or might be a party to proceedings brought for the same purpose under paragraph (a) or (b) of the Clause. (emphasis added)

C

**[96]** An "incompetency challenge" arises when Parliament or a State Legislature is not vested with the authority to enact the law being contested. The crux of an "incompetency challenge" is to determine the source of legislative power. If it is found that the relevant legislative body lacked the D authority to make the law, the challenge seeks a declaration that the impugned law is invalid due to this lack of power. The focus, therefore, is not on whether the law contravenes other constitutional restrictions or requirements, but rather on whether the lawmaker – either Parliament or a State Legislature – was empowered to legislate on the subject matter in the E first instance. Tengku Maimun Tuan Mat CJ in *Wong Shee Kai v. Government Of Malaysia* (*supra*) explained the concept of an "incompetency challenge" as follows:

> [34] To summarise, *any 'incompetency' challenge encompasses a situation where Parliament or the State Legislature is not in the first place, empowered to even enact the impugned law*. It would not strictly matter in those circumstances F whether the law exceeds other restrictions or conditions imposed by the Federal Constitution because *the scrutiny in an 'incompetency' challenge is to ascertain the source of the power to make that law with the view to seeking declaratory relief to the effect that the relevant Legislature (Federal or State) had no power to make that law*.
>
> (emphasis added)

G

**[97]** In the present case, the appellant's application for judicial review essentially constitutes a challenge to the constitutional validity of s. 229 of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003, as well as ss. 61 and 151 of the Administration of the Religion of Islam (State H of Selangor) Enactment 2003. The appellant's argument centres on the contention that State Legislatures do not have the authority, under the Federal Constitution, to enact laws which confer upon Syariah Courts the jurisdiction and power to initiate contempt proceedings and issue committal orders.

I **[98]** Having regard to the arguments and constitutional provisions, it is evident to us that the appellant's judicial review application is, in substance, an "incompetency challenge". In accordance with the requirements stipulated under art. 4(4) of the Federal Constitution, such a challenge

necessitates an application for leave from the Federal Court, rather than the filing of a judicial review at the High Court. On this basis, the appellant did not follow the proper procedure, and as a result, his appeal must be dismissed.

**Conclusion**

**[99]** It follows from the foregoing analysis that the appellant's application for judicial review suffers from fundamental defects. The most significant of these is the appellant's failure to observe the constitutionally mandated process for mounting an "incompetency challenge" as stipulated under art. 4(3) and 4(4) of the Federal Constitution. Rather than seeking the necessary leave from the Federal Court, the appellant instead attempted to pursue the challenge through judicial review in the High Court.

**[100]** In addition to the constitutional shortcomings, the appellant also did not satisfy the procedural requirements for judicial review set out under O. 53 of the Rules of Court 2012. There was no "decision" adversely affecting the appellant, and the application was filed outside the prescribed three-month time limit. These failures cumulatively render the appellant's application for judicial review untenable.

**[101]** Given the lack of compliance with both constitutional and procedural requirements, we are compelled to conclude that this court is without jurisdiction to entertain this appeal.

**Decision**

**[102]** For the reasons explained above, there is judgment as follows:

(i) the appellant's appeal is dismissed;

(ii) the appellant shall pay to R1 costs of this appeal in the amount of RM20,000, subject to allocatur;

(iii) the appellant shall pay to R2, R4, R5, R6 and R7 costs in the amount of RM30,000;

(iv) the appellant shall pay to R3 and R8 costs in the amount of RM10,000; and

(v) the appellant shall pay to R9 costs in the amount of RM10,000, subject to allocatur.

**[103]** The order of the High Court dated 6 July 2023 is accordingly affirmed.